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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,325	05/30/2001	David L. Cleary Neubert	6208-019	7702

27383 7590 09/10/2007  
CLIFFORD CHANCE US LLP  
31 WEST 52ND STREET  
NEW YORK, NY 10019-6131

EXAMINER
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SUBRAMANIAN, NARAYANSWAMY

ART UNIT	PAPER NUMBER
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3692

MAIL DATE	DELIVERY MODE
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09/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/870,325

**Applicant(s)**

CLEARY NEUBERT ET AL.

**Examiner**

Narayanswamy Subramanian

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is in response to Applicant's communication filed on June 27, 2007. Amendments to claims 1-3, 5, 12, 21-22, 25-27, and 29 have been entered. Claims 1-36 are pending in this application and are subject to election/restriction as discussed below.

#### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-20, drawn to a method for matching a buy order having a buy order price and a sell order having a sell order price, comprising the steps of: identifying an NBBO price range; determining if said buy order price and said sell order price are within said NBBO range; determining if said buy order price is not less than said sell order price; calculating a midpoint between said buy order price and said sell order price; and only matching said buy order and said sell order at said midpoint if said buy order price is not less than said sell order price and said buy order price and said sell order price are within said NBBO range, classified in class 705, subclass 37.

II. Claims 21-36, drawn to a crossing system, comprising: a plurality of passive orders, wherein said passive orders include at least one order selected from the group consisting of: not held designated orders, cross only designated orders and do not represent designated orders; a plurality of pass-through orders; said plurality of passive orders and said plurality of pass-through orders including buy orders and sell orders; a crossing network, said crossing network receiving said plurality of pass-through orders and said plurality of passive orders for matching said buy orders and said sell orders; an order router in communication with said crossing network and with at least one external order destination, said order router receiving at

least a portion of said pass-through orders from said crossing network and forwarding said at least a portion of said pass-through orders to said at least one external order destination, classified in class 705, subclass 37.

3. The inventions are distinct from each other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method as claimed can be practiced by hand. Also the apparatus as claimed can be used for another method comprising receiving at least a portion of pass-through orders from the crossing network and forwarding said at least a portion of said pass-through orders to at least one external order destination. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper, even though they are classified in the same class and subclass.

4. Applicant is advised that reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Narayanswamy Subramanian whose telephone number is (571) 272-6751. The examiner can normally be reached Monday-Thursday from 8:30 AM to 7:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Kambiz Abdi can be reached at (571) 272-6702. The fax number for Formal or Official faxes and Draft to the Patent Office is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only. For more information about the PMR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dr. N. Subramanian  
Primary Examiner  
Art Unit 3692

September 3, 2007